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Cheryl Probert
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Sent via e-mail to: comments-northern-nezperce@fs.fed.us

July 14, 2017

Subject: Small NEPA Projects

Dear Supervisor Probert:

Since 1973, the Idaho Conservation League has been Idaho's voice for clean water, clean air and wilderness—values that are the foundation for Idaho's extraordinary quality of life. The Idaho Conservation League works to protect these values through public education, outreach, advocacy and policy development. As Idaho's largest state-based conservation organization, we represent over 25,000 supporters, many of whom have a deep personal interest in protecting human health and the environment.

I am writing in response to your letter, dated June 29, 2017, requesting public comments about the Baner Group Exploratory Drilling Project, Cherry Exploratory Drilling Project, Sally Exploratory Drilling Project, and North Fork Aspen Regeneration Project. Project-specific comments are attached. Please be sure to mail me any environmental documents or decisions related to these projects.

Sincerely,

Brad Smith
North Idaho Director

Baner Group Exploratory Drilling, Cherry Exploratory Drilling, and Sally Exploratory Drilling Projects

General

Although the 1872 Mining Law establishes a legal framework for mineral location and entry on the public lands, the Forest Service is not obligated to approve a plan of operations if the plan does not fulfill the requirements of all other applicable laws and regulations such as the Endangered Species Act (ESA), National Forest Management Act (NFMA), Federal Lands Management Policy Act (FLMPA), and any other applicable laws and regulations governing the use of National Forest System lands and the disposal of minerals.

National Environmental Policy Act (NEPA)

“A threshold question in a NEPA case is whether a proposed project will ‘significantly affect’ the environment, thereby triggering the requirement for an EIS [Environmental Impact Statement].” *Blue Mountains Biodiversity Project*, 161 F.3d at 1212 (citing 42 USC § 4332(2)(C)). “As a preliminary step, an agency may prepare an EA [Environmental Assessment] to decide whether the environmental impact of a proposed action is significant enough to warrant preparation of an EIS.” *Id.* (citing 40 CFR § 1508.9). “The purpose of an EA is to provide the agency with sufficient evidence and analysis for determining whether to prepare an EIS or to issue a [Finding of No Significant Impact].” *Metcalf v. Daley*, 214 F.3d 1135, 1143 (9th Cir. 2000) (citing 40 CFR § 1508.9). “Because the very important decision whether to prepare an EIS is based solely on the EA, the EA is fundamental to the decision-making process.” *Id.*; see also 40 CFR § 1500.1(b); *Idaho Sporting Congress*, 137 F.3d at 1151. If the preparation of an EA reveals that significant effects will in fact occur, then the Forest Service should not rule out the possibility of preparing an EIS.

Cumulative Effects

The Forest Service must disclose the combined effects of all past, present, and reasonably foreseeable future actions in the project areas. With regard to the Baner and Sally Exploration Projects, these two proposals are immediately adjacent to one another and perhaps, should be analyzed together.

Appropriateness of Category 8 CE

The CE category described at 36 CFR 220.6(e)(8) has never been programmatically reviewed under NEPA. Therefore, we question the appropriateness of applying a CE category that has not been reviewed as required by the law.

Orderly Steps in the Development of Mines

The Forest Service may limit the scope of a Plan of Operations to match the appropriate step in the normal development of a mine by a prudent person. The agency is not obligated to approve a proposed Plan of Operations if it does not follow the next logical step in the orderly development of a mine. The orderly steps are outlined in the Forest Service Handbook at FSH 2809.15, Sec. 11. The actions and expenditures of labor and resources by a person of ordinary prudence using industry-accepted techniques to prospect, explore, develop, produce, abandon or reclaim a valuable mineral deposit using methods, structures and equipment appropriate to the geological terrain, mineral deposit, and stage of development and reasonably related activities include:

Prospecting - the preliminary searching for outcrops or surface exposures of mineral deposits. At this earliest stage of mining activity, it is characterized by activities that result in low impact to surface resources, such as driving on existing roads, hiking or riding on trails or cross country, field and geologic reconnaissance mapping, taking small samples by hand or with small highly portable tools, stream sediment sampling, panning of placer samples or small-scale sluicing, soil sampling, claim staking, and using portable geophysical equipment.

Exploration - the second stage in the logical progression of mining activities. It usually occurs once a geologically favorable target area, with moderate to high mineral potential, is identified through prospecting, but subsurface information is still needed to determine the presence and extent of any mineral resources and whether any of this constitutes economic reserves. Its purpose is to narrow the search for a mineral resource, better define a target, and ultimately to discover a valuable mineral deposit that can be mined, removed, and marketed at a profit.

Development - the stage of mining activity that occurs once exploration drilling and other activities have identified a valuable mineral deposit (that is, ore grade and a significant reserve is established), but the dimensions of the ore deposit are not yet fully delineated (it may be "open" on several sides), and all the parameters necessary for mine design and production are not yet known or understood. The purpose of development is to delineate the ore body, establish grade and reserves with a high degree of probability so economics of the deposit can be fully evaluated, and provide the claimant/operator with information necessary to make a decision as to when and whether to invest the often sizable capital expenditure necessary to progress to the next stage of mining activity—production.

Production - The most prevalent activities at this stage are mining, removing, and processing of previously discovered and developed ore deposit and marketing a product. The quantity and quality of the ore at this stage is known with a high level of certainty, and the operator has made a firm commitment through capital expenditures and engineering design and construction.

Abandonment and Reclamation - Reclamation should occur at all stages of mining activity where surface disturbance results. However, abandonment and final reclamation occur

after production has ceased because the ore body mined out. Long-term mine closure may result from changing economics, such as declining metals prices or operating cost increases. Regardless of the cause, when production activities have ceased or significantly declined and are expected to remain so for the long term, equipment, structures, and other facilities, as they are no longer needed, should be removed.

The environmental analysis and decision document should describe why the proposed plan of operations is the next orderly step in the development of a mine by a prudent person.

Surface Use Determination

If the proposed Plan of Operations is unnecessarily and unreasonably destructive to surface resources and damaging to the environment, the Forest Service should seek to modify the Plan of Operations to minimize effects to national resources as required by 36 CFR § 228.1. When assessing whether an operation is unnecessarily and unreasonably damaging national forest resources, some things to consider include:

1. Site-specific circumstances of the operation being considered and resources affected.
2. Some possible reasonable alternatives to the proposal, and their potential effects compared to the proposal.
3. Standard industry practices; that is, typical approved activities for operations that have similar geographic settings and levels of mineral resource evidence.
4. Any established best management practices for proposed use or similar uses.
5. New research and technology that may present some viable options for minimizing effects on national forest resources.

FSH 2809.15, Sec. 13.9.

Where the authorized officer is unable to agree on appropriate and reasonable modifications to the proposed Plan of Operations and mitigation with the claimant, a Surface Use Determination process should be undertaken. FSH 2809.15, Sec. 11.2. A qualified minerals examiner should prepare the surface use determination report as described in the Forest Service Handbook. FSH 2809.15, Sec. 13.

Forest Plan Compliance

The environmental analysis and decision documents should describe how the project satisfies relevant forest plan direction.

Sensitive, threatened, and endangered species

The Forest Service should prepare a biological assessment of the potential direct or indirect effects of the proposed action to all sensitive, threatened, and endangered species, including plants, fish and wildlife. Appropriate mitigation and design features should be required to avoid

or minimize effects to all sensitive, threatened, and endangered species, such as limiting or restricting the timing or location of operations. Consultation should occur with the relevant state and federal agencies that are charged with managing fish and wildlife.

Groundwater and acid mine drainage

A key concern with the proposal is the potential for acid mine drainage. The environmental analysis should characterize the geologic formation(s) in the project area and describe their potential to react with water and air to produce acid mine drainage. Mining operations that produce acid mine drainage require wastewater treatment in perpetuity.

The environmental analysis should also characterize groundwater in the project area, including depth below ground and subsurface flow patterns. Development of a mine mine could result in a decline in groundwater levels and consequently, surface water flows.

Water sources

If the operator plans to withdrawal or divert water for their operations then a water right must be sought and obtained from the Idaho Department of Water Resources. This requirement applies even when water is diverted or withdrawn off-site, including outside of Forest Service administrative boundaries.

In the event that the proponent is diverting or withdrawing water for the project, on- or off-site, then the Forest Service should require proof that a water right has been obtained from the Idaho Department of Water Resources prior to approving any plan of operations, or initiating any ground-disturbing activities.

The timing and location of water withdrawal should be restricted to avoid impacts to aquatic organisms and sensitive, threatened, and endangered species. Source and quantities of water to be diverted should be described and illustrated in the environmental analysis.

ICL also recommends that the operator recycle drilling water in order to reduce the amount of source water that would be diverted or withdrawn.

Incidental trash and waste

However, proper clean up of all trash, food, and human waste should be required at all times. Food and other animal attractants should be properly stored in order to avoid unwanted conflicts with wildlife and wildlife habituation.

Transportation, storage and disposal of hazardous materials and pollutants

All fuels, oils, lubricants, solvents, liquids, gases, drilling mud, etc. should be properly contained, labeled, and stored outside of riparian conservation areas. The environmental analysis should

provide a list of these fluids and substances, including the amounts that will be used and stored on site at any given time.

A hazardous materials plan should be in place in the event of a spill anywhere in the project area. Spill containment equipment, including chemical absorbers and booms to intercept stream transport should be readily available on site. Workers should be trained and certified to respond in the event of a leak or spill. Hazardous wastes should be properly disposed off-site on a regular basis.

The environmental analysis should also describe the quantities of hazardous fluids and substances that will be transported, the transportation routes that will be used, and the number of trips that will be taken. In addition, the document should describe what emergency spill and containment equipment will be required to accompany transport vehicles and crews in the event that a spill occurs. The operator must also have a plan in place to respond in the event of a leak or spill during transportation. Special provisions may be necessary considering the remoteness of the project area and the conditions of the transportation infrastructure.

Vehicular Access

The operator should be required to fully reclaim all access routes. At a minimum, all culverts should be removed and the road surface should be decompacted and revegetated. Ideally, closed roads would be fully recontoured in order to reestablish natural drainage patterns and discourage illegal off-road vehicle use. Course weedy debris should be placed across the affected area to discourage motorized access and create favorable microclimates for the reestablishment of vegetation and trees. The route should be seeded with a Forest Service approved seed mixture, ideally consisting of native plant sources. The prism should also be stocked with desirable tree seedlings. The calculation of the bond should factor in the full costs associated with recontouring access routes to match the natural topography and reestablishing native vegetation.

The Forest Service must also ensure that the access routes are consistent with Forest Plan standards for elk habitat security in the project area.

Noxious Weeds

ICL appreciates the fact that the operator will be required to wash and clean all equipment before entering public lands. A knowledgeable agency employee should also inspect the proponent's equipment. These management practices are necessary to limit the spread of invasive weeds and plants.

Disturbed soil should be reseeded with an approved mixture of native seed. A noxious weed monitoring and treatment program should be implemented for several years after completion of the project.

Mitigation

In addition to exploring a reasonable range of alternatives to the proposed action, regulations implementing NEPA require inclusion of “appropriate mitigation measures not already included in the proposed action or alternatives.” 40 CFR § 1502.14(f). Moreover, in the final record of decision (ROD), federal agencies are required to “[s]tate whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not. A monitoring and enforcement program shall be adopted and summarized where applicable for any mitigation.” 40 CFR § 1505.2(c). Mitigation is defined at 40 CFR § 1508.20(a)-(e):

- (a) Avoiding the impact altogether by not taking a certain action or parts of an action.
- (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
- (c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.
- (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
- (e) Compensating for the impact by replacing or providing substitute resources or environments.

Reclamation and bonding

The Forest Service should describe the reclamation process and all associated costs in detail in the environmental analysis. This analysis should include the volume and type of material to be moved, equipment needed, location for stockpiling, sequence for reclamation, and any other reclamation activities. To the extent practical, reclamation activities should take place concurrently with the operation.

An adequate reclamation bond for mining operations must be required and disclosed as part of the environmental analysis. The bond must be substantive enough to cover the worst possible impacts to the human and natural environment and at a minimum, take into consideration:

- Possible spills of fuels and other hazardous materials
- Impacts to the ecosystem
- Road decommissioning
- Monitoring

The bond should be calculated by the Forest Service or a third party.

North Fork Aspen Regeneration Project

The Idaho Conservation League supports the proposed regeneration of aspen stands on Birch Ridge. In fact, we encourage the Forest Service to think bigger and explore more aspen regeneration opportunities on a larger scale.